

US & Multilateral Trade and Policy Developments

Japan External Trade Organization

April 2015

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US General Trade Policy

US Lawmakers Introduce Trade Promotion Authority Legislation

On April 16, 2015, Senate Finance Committee Chairman Orrin Hatch (R-UT), Ranking Member Ron Wyden (D-OR), and House Ways and Means Committee Chairman Paul Ryan (R-WI) introduced the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (“TPA 2015”). If approved, the legislation would grant Trade Promotion Authority (TPA) to the President through July 1, 2018, and authorize an extension of TPA through July 1, 2021 if the President so requests and neither chamber of Congress passes a resolution disapproving the extension.

Similar to previous TPA legislation, the three principal components of TPA 2015 are: (i) Congressional objectives for trade agreements negotiated by the Executive Branch; (ii) Executive-Congressional notification and consultation requirements; and (iii) procedures for expedited Congressional consideration of trade agreements. Each of these components, as well as TPA’s next steps, are discussed below.

TPA Component 1: Negotiating objectives

The negotiating objectives established by TPA 2015 are similar to those included in the *Bipartisan Congressional Trade Priorities Act of 2014* (“TPA 2014”) introduced by Sen. Hatch and then-Sen. Max Baucus (D-MT), which was not enacted by Congress. Similar to TPA 2014, TPA 2015 would (i) make substantive revisions to the US negotiating objectives established by the *Trade Act of 2002* (“TPA 2002”), which expired in 2007; and (ii) establish US negotiating objectives in several new areas that TPA 2002 did not address. TPA 2015 also reiterates several negotiating objectives from TPA 2002.

By establishing these negotiating objectives, Congress intends for TPA 2015 to guide the U.S. Trade Representative’s (USTR) actions and priorities in trade and investment agreement negotiations. However, unlike EU negotiating mandates, which are binding on the European Commission, TPA 2015 gives US negotiators flexibility to deviate from certain of these objectives to complete an agreement. Nevertheless, USTR may not disregard TPA 2015’s negotiating objectives entirely, as Congress retains the authority to vote against any agreements negotiated pursuant to TPA 2015. Thus, USTR generally follows the negotiating objectives set forth in TPA.

We summarize below the notable differences between the TPA 2015 and TPA 2002 negotiating objectives, and list the negotiating objectives retained from TPA 2002.

□ New negotiating objectives

TPA 2015 would establish negotiating objectives in the following areas for the first time:

- **Currency:** TPA 2015 states that the principal US negotiating objective regarding currency practices is that “parties to a trade agreement with the United States avoid manipulating exchange rates in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage over other parties to the agreement.” However, TPA 2015 allows for this objective to be achieved through “cooperative mechanisms, enforceable rules, reporting, monitoring, transparency, or other means, as appropriate,” and thus does not require that US trade agreements contain binding and enforceable currency rules.
- **State-owned enterprises (SOEs):** TPA 2015 directs US negotiators to seek commitments that (i) “eliminate or prevent trade distortions and unfair competition favoring [SOEs] to the extent of their engagement in commercial activity,” and (ii) “ensure that [SOEs’ commercial] engagement is based solely on commercial considerations.” In this regard, TPA 2015 seeks disciplines that would eliminate or prevent non-transparent

practices, discrimination and market-distorting subsidies, but does not require such disciplines to be enforceable.

- **Localization barriers to trade:** TPA 2015 states that a principal US negotiating objective is to “eliminate and prevent measures that require [US] producers and service providers to locate facilities, intellectual property, or other assets in a country as a market access or investment condition.” TPA 2015 specifically targets so-called “indigenous innovation” measures with this provision (a frequent target of US complaints against China), but its language could also apply to other performance requirements.
- **Human rights:** TPA 2015 includes a negotiating objective to ensure implementation of trade commitments by promoting respect for internationally recognized human rights and strengthening good governance, transparency, and the rule of law among US trading partners.

□ **Amended negotiating objectives**

TPA 2015 would amend the negotiating objectives in areas that previously were addressed in TPA 2002, as follows:

- **Digital trade in goods and services and cross-border data flows:** TPA 2015 states that a principal US negotiating objective is to “ensure that governments refrain from implementing trade related measures that...restrict cross-border data flows.” This provision targets government measures that (i) require local storage or processing of data and (ii) impede or restrict electronic commerce or digital trade in goods and services.
- **Intellectual property rights (IPR):** TPA 2015 directs US negotiators to promote IPR protection by preventing or eliminating government involvement in the violation of intellectual property rights, in particular through acts of cyber theft and piracy. TPA 2015 also establishes a negotiating objective to ensure that trade agreements foster innovation and promote access to medicines.
- **Regulatory practices:** TPA 2015 includes objectives to ensure that (i) foreign governments limit their collection of undisclosed proprietary information to that which is necessary to satisfy legitimate regulatory interests; (ii) government regulatory reimbursement regimes are transparent and non-discriminatory; and (iii) regulatory coherence, transparency, and compatibility are promoted.
- **Labor and environment:** TPA 2015 includes negotiating objectives to ensure that parties to US FTAs adopt and maintain measures to implement (i) “internationally recognized core labor standards,” and (ii) their respective “obligations under common multilateral environmental agreements.” Further, TPA 2015 adds an objective “to ensure that enforceable labor and environment obligations are subject to the same dispute settlement and remedies as other enforceable obligations under the agreement.” However, TPA 2015’s objectives regarding labor and environmental obligations are consistent with recent US free trade agreements (FTAs) like the US-Korea agreement.
- **WTO and multilateral agreements:** TPA 2015 expands upon the WTO-related provisions of TPA 2002 by adding new objectives that emphasize the importance of US enforcement efforts at the WTO. These include objectives to (i) ensure that regional trade agreements (RTAs) to which the United States is not a party comply with WTO disciplines (including Article XXIV of GATT 1994, Article V and V bis of the General Agreement on Trade in Services, and the Enabling Clause), including through WTO reviews of such RTAs; and (ii) enhance compliance by WTO members with their obligations through active US participation in the WTO, including in the trade policy review mechanism; and (iii) expand country participation in and enhancement of the Government Procurement Agreement.
- **Agriculture and geographical indications:** TPA 2015 directs US negotiators to (i) eliminate and prevent the undermining of market access for US products through “improper use of a country’s system for protecting

or recognizing geographical indications,” including failure to ensure transparency or protect generic terms; and (ii) secure robust rules on sanitary and phytosanitary measures, specifically rules that would encourage the adoption of international standards and improve regulatory coherence, transparency, and import check processes.

□ **Retained negotiating objectives**

TPA 2015 also includes, but does not substantively modify, the TPA 2002 negotiating objectives pertaining to (i) foreign investment; (ii) textile negotiations; (iii) border taxes; (iv) trade remedy laws; (v) dispute settlement and enforcement; and (vi) trade in goods. Further, TPA 2015 makes minor updates to the TPA 2002 negotiating objectives regarding (i) trade in services; (ii) electronic commerce; (iii) trade institution transparency; and (iv) anti-corruption.

TPA Component 2: Notification and consultations

TPA 2015 contains new transparency provisions and retains nearly all of the standard consultations and notification requirements from previous versions of TPA.

The following new provisions are intended to assuage congressional and public concerns about a lack of transparency and accountability in the US trade negotiations process:

- A requirement that the text of completed trade agreements be made public 60 days prior to being signed by the President; and
- A new mechanism, known as a Consultation and Compliance Resolution (CCR) that would allow either chamber of Congress to deny expedited (*i.e.*, fast-track) legislative procedures (discussed in the next section) to an implementing bill if the relevant agreement does not meet the required negotiating objectives. The CCR is similar to the “disapproval resolution” mechanism provided in TPA 2002, but differs in that it would permit each chamber of Congress to independently deny fast-track privileges to an implementing bill.

However, the inclusion of the CCR in TPA 2015 is not expected to increase significantly the capability of Congress to deny fast-track privileges to an implementing bill. Because the expedited procedures under TPA 2015 operate as procedural rules of each chamber of Congress, each chamber already retains the authority to modify or override the rules at any time. Such an override has occurred in the past: in April 2008, the House of Representatives approved a resolution introduced by Rep. Nancy Pelosi (D-CA) that changed House rules to specify that expedited legislative procedures would not apply to implementing legislation for the US-Colombia agreement. As such, the agreement stalled in Congress, even though it was submitted under TPA 2002.

TPA 2015 also retains nearly all of the standard consultations and notification rules from previous versions of TPA. These include requirements that (i) at least 180 days prior to signing an agreement, the Executive Branch must submit a report to Congress detailing potential changes to US trade remedy laws that might be required under the agreement; (ii) at least 90 days before signing an agreement, the President must notify Congress of his intention to enter into the agreement; (iii) within 30 days after the President provides the notification described in (ii), the President’s Advisory Committees must submit reports on the proposed agreement to the President, Congress, and USTR; and (iv) within 60 days after signing the agreement, the President must submit to Congress a description of changes to existing laws required to bring the United States into compliance with the agreement.

Similar to TPA 2014, TPA 2015 would require the US International Trade Commission to submit its report assessing the economic impact of the agreement to the President and Congress within 105 days after the agreement is signed. In contrast, TPA 2002 required the ITC to submit this report within 90 days of the agreement being signed.

TPA Component 3: Congressional consideration of completed FTAs

TPA 2015 would establish the same expedited legislative procedures for Congressional consideration of completed FTAs as TPA 2002. Under these procedures, Congressional consideration of the implementing legislation for an FTA

may last for up to 90 “in-session” days before a final floor vote must be taken.

First, after the FTA has been signed, the Executive Branch must deliver the required implementing legislation to Congress on an in-session day. Upon receipt of the implementing legislation, identical versions of the bill must be introduced in the House of Representatives and the Senate, and then referred to the House Ways and Means and Senate Finance Committees. The implementing bills cannot be amended by either chamber at any point in the process.

Next, the House Ways and Means Committee will have 45 in-session days to report the bill; otherwise, it will be discharged and placed on the House calendar. The House then will have 15 in-session days to vote on the bill, during which debate will be limited to 20 hours, and the bill can be approved by a simple majority. If approved, the House bill will be sent to the Senate.

Once received by the Senate, the Senate Finance Committee will have 15 in-session days to report the bill; otherwise, it will be discharged and placed on the Senate calendar. The Senate then will have 15 in-session days to hold a floor vote on the bill, during which debate will be limited to 20 hours. If passed by the Senate, the bill will be sent to the President to be signed into law. Cumulatively, the entire process from introduction of the implementing legislation to a floor vote in the Senate can take up to 90 in-session days assuming that Congress makes full use of its statutorily allotted time. Alternatively, if the Senate votes on the implementing legislation prior to or concurrently with the House, the maximum duration of this process would be shortened to 60 in-session days under the expedited legislative procedures. However, Congress is not required to proceed in this manner.

Next steps

The Senate Finance Committee is scheduled to hold a markup of TPA 2015 on April 22, while the House Ways and Means Committee is expected to hold its markup of TPA 2015 on April 23. According to Sen. Wyden, the markup also will include legislation to reauthorize Trade Adjustment Assistance (TAA), a federal entitlement program providing worker training and financial assistance to US workers allegedly adversely impacted by foreign trade. TAA is a Democratic priority that Sen. Hatch and most Congressional Republicans oppose, but that Sen. Hatch has committed to advance “in parallel” with TPA 2015 in exchange for Democratic support for TPA 2015. Sens. Rob Portman (R-OH) and Debbie Stabenow (D-MI) are expected to offer an amendment during the markup that would require FTAs to contain enforceable currency rules. If adopted, such an amendment would, according to Sen. Hatch, “make it very, very difficult” for TPA 2015 to be enacted. As a result, the Obama Administration and Republican leadership will seek to limit support for this proposal.

The House Ways and Means and Senate Finance Committees are expected to approve TPA 2015 in the coming weeks, and the House and Senate sponsors of the bill will attempt to advance the legislation to the chambers’ floors as soon as possible thereafter. Senate Majority Leader Mitch McConnell (R-KY) stated on April 16 that he hopes to bring TPA 2015 to the Senate floor for debate “in the very near future,” but he did not provide a specific timeframe. Congressional leaders are seeking to vote on the legislation before the Memorial Day recess on May 22 – a highly ambitious timeframe with little (if any) margin for error.

US General Trade Policy Highlights

US Steel Producers Target Chinese Trade Practices in Testimony before Congressional Steel Caucus

On March 26, 2015, US steel industry representatives testified before leaders of the US Congressional Steel Caucus regarding the allegedly adverse effects of rising steel imports from China and other countries. During the hearing, the industry representatives attributed the recent rise in steel imports to a number of alleged “illegal” and “unfair” trade practices, including (i) dumping; (ii) subsidization by foreign governments of their domestic steel industries; and (iii) intentional currency undervaluation by foreign governments. The US steel industry is a frequent user of US trade remedy laws, and such testimony likely serves as a precursor to petitions for antidumping and countervailing duty

investigations.

The comments and allegations made by the US steel industry representatives were largely directed towards China, the world's largest steel producer and exporter. In 2014, global steel exports from China totaled 82.1 million tons, a 59 percent increase relative to 2013. This increase stemmed in large part from (i) prioritized public and private investment in the Chinese steel industry; (ii) low growth, relative to 2013 (approximately 1 percent), in China's domestic steel demand; and (iii) a reduction in input prices, including iron ore, the principal input in steel production. US imports of steel from China increased by 68 percent between 2013 and 2014, and high levels of Chinese steel production and exports are expected to continue throughout 2015.

The US steel industry representatives also expressed concerns over recent increases in steel import volumes from India, Russia, South Korea, and Turkey, indicating that exporters from these countries could be implicated in a potential trade remedy investigation of Chinese steel imports. Any new investigations concerning imported steel products from China would supplement the current investigations and duty orders on certain Chinese steel products (e.g., Oil Country Tubular Goods). Industry sources have speculated that potential trade remedy cases filed against China in 2015 might pertain to cold-rolled and coated flat-rolled steel products, as well as hot-rolled steel coil and plate.

The US steel industry representatives alleged during the hearing that rising steel imports have contributed to decreased employment, investment, and capacity utilization in the domestic industry. Similar advocacy efforts intended to counteract rising steel imports are underway in the European Union, where representatives of the EU steel industry recently met with Commissioner for Trade Cecilia Malmström to argue for increased steel tariffs and duties.

USTR Updates Review of Japan in 2015 National Trade Estimate Report

On April 1, 2015, the Office of the US Trade Representative (USTR) released the 30th National Trade Estimate Report on Foreign Trade Barriers ("2015 NTE"). Pursuant to the *Trade Act of 1974*, as amended, the NTE provides a country-by-country inventory of the most important foreign barriers affecting the following: (i) US exports of goods and services; (ii) foreign direct investment by US persons; and (iii) protection of intellectual property rights. The stated goals of the NTE are to enhance awareness of the identified foreign trade barriers and to facilitate negotiations aimed at reducing or eliminating the barriers.

The trade barriers identified in the 2015 NTE are categorized as follows: (i) import policies; (ii) sanitary and phytosanitary (SPS) measures and technical barriers to trade; (iii) government procurement; (iv) export subsidies; (v) lack of intellectual property protection; (vi) barriers to services trade; (vii) investment barriers; (viii) anticompetitive public or private practices tolerated by foreign governments; (ix) trade restrictions affecting electronic commerce; and (x) other barriers, including bribery and corruption. From 2010 to 2014, USTR published its annual assessment of sanitary and phytosanitary barriers and technical barriers to trade in stand-alone reports; however, those reports have been incorporated into the 2015 NTE.

USTR's review of Japan in the 2015 NTE reiterates concerns expressed in previous years' NTE reports and notes that such concerns are being addressed through the Trans-Pacific Partnership negotiations and other fora. In addition to highlighting these pre-existing concerns, the 2015 NTE identifies new and expanded concerns in certain areas, as well as progress made towards the elimination of certain alleged barriers, as follows:

Import policies

- The 2015 NTE reiterates previous concerns regarding Japan's Wood Use Point Program, which was administered between July 2013 and September 2014, including a cumbersome application process that allegedly limited the import eligibility of foreign wood species.

Services barriers

- According to the 2015 NTE, the Nippon Telegraph and Telephone Corporation (NTT) intended to begin

wholesaling its fiber-optic fixed-line services to other companies, including NTT DOCOMO, in February 2015. The NTE cites stakeholder concerns that such developments could result in NTT re-obtaining a dominant market share.

- The 2015 NTE alleges that despite extensive consultations with Japanese authorities, American universities have not been able to satisfy the legal requirements to be granted “educational corporation” (“gakkou houjin”) status, which would confer the same tax benefits enjoyed by Japanese universities.
- The 2015 NTE acknowledges that progress was made in 2013 and 2014 towards expanding private insurance suppliers’ access to Japan’s postal network. The NTE also discusses the Initial Public Offering (IPO) process for Japan Post Holdings and states that the IPO process should proceed transparently.
- The 2015 NTE notes that, due to a decision by Prime Minister Abe in November 2014, the imposition of a consumption tax on online content from abroad has been postponed until April 2017.

Intellectual property rights (IPR) protection

- The 2015 NTE notes that enforcement of Japan’s new Geographical Indications regime is scheduled to begin in 2015 and that the United States will continue to engage with Japan regarding the regulations that will govern the new regime.
- The 2015 NTE notes that Japan amended its *Copyright Act* in April 2014 to establish new copyright provisions concerning publication rights for digitally published materials (e-books). The NTE also notes that Japan’s Ministry of Economy, Trade and Industry and other government agencies are working on further IPR-related legal revisions to the *Patent Act*, *Design Act*, *Trademark Act*, and other laws.

Government procurement

- The 2015 NTE alleges that “problematic practices,” such as bid rigging, continue to limit the participation of US firms in Japan’s public works sector. The NTE also notes that the US Government is “paying special attention” to certain major projects covered by existing US-Japan public works agreements, including construction projects for the 2020 Olympics in Tokyo.

Other sectoral and cross-sectoral barriers

- According to the 2015 NTE, US stakeholders have raised concerns regarding Japan’s proposal to revise reimbursement prices for medical devices and pharmaceuticals annually, as opposed to the current biennial revision cycle. US stakeholders fear that such changes could lead to greater uncertainty and administrative burdens for stakeholders in Japan’s pricing and reimbursement system. The 2015 NTE also notes that the United States continues to urge Japan to harmonize its efforts with other key regulatory agencies on international standards in clinical development, multiregional clinical trials, and risk management.
- The 2015 NTE acknowledges that in July 2014, Japanese authorities eased restrictions on maintenance procedures for vehicles using a particular type of air conditioner refrigerant, allowing for importation of new models in which the refrigerant is installed. In addition, the NTE notes that in 2013, Japan more than doubled the number of imported vehicles per type that may use the simplified Preferential Handling Procedure for certification.

Sanitary and phytosanitary measures

- According to the 2015 NTE, the United States is requesting that Japan streamline its review process for agricultural chemicals, including fungicides, that are applied both as pesticides (pre-harvest application) and as food additives (post-harvest application).

The 2015 NTE also reiterates concerns expressed in previous NTE reviews of Japan pertaining to (i) import systems

for rice, wheat, and pork; (ii) safeguard measures for beef; (iii) tariffs and quotas on a variety of products; (iv) customs issues; (v) competition issues related to Japan Post and the Japanese insurance market; (vi) alleged barriers in the financial services, telecommunications, information technology, and legal services industries; (vii) IPR protection; (viii) alleged regulatory impediments to foreign direct investment; (ix) alleged anti-competitive practices; (x) various SPS measures; and (xi) other alleged sectoral and cross sectoral barriers.

Despite the concerns listed above, USTR did not include any developments related to Japan in its summary of “noteworthy changes” identified in the 2015 NTE. Such noteworthy changes largely pertained to measures or commitments adopted by nations such as China, India, and Indonesia, as well as nations that have undertaken significant economic reforms over the past year, such as Mexico.

Click [here](#) for a copy of the 2015 National Trade Estimate Report. The section on Japan is contained on pages 209 – 225.

US Treasury Department Issues Semi-Annual Report on International Economic and Exchange Rate Policies

On April 9, 2015, the US Department of the Treasury (“Treasury Department”) published its semi-annual Report to Congress on International Economic and Exchange Rate Policies (“April 2015 report”). Pursuant to Section 3004 of the *Omnibus Trade and Competitiveness Act of 1988*, this semi-annual Treasury Department report evaluates the exchange rate policies of major US trading partners and considers whether such trading partners “manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade.”

Consistent with the majority of its previous reports under Section 3004, the Treasury Department concluded in its April 2015 report that no major US trading partner met the standard for manipulating its currency during the examined time period. Such a conclusion is not unusual; in fact, the Treasury Department has not alleged that a major US trading partner manipulated its currency since 1994, when it made such an allegation regarding China.

The April 2015 report might attract political attention as Congress and the Obama Administration debate currency-related issues in the context of Trade Promotion Authority (TPA) legislation and the Trans-Pacific Partnership (TPP). The majority of Congressional Democrats and some Congressional Republicans have expressed concerns over the alleged negative effects of currency manipulation, and several Members support legislative proposals that seek to combat currency manipulation through free trade agreements (FTAs), including the TPP, and US trade remedy laws.

Certain US lawmakers who support such proposals have criticized the Obama Administration’s position that currency manipulation should not be addressed unilaterally through US legislation, but rather bilaterally, through negotiations headed by the Treasury Department, and multilaterally, through international fora such as the International Monetary Fund. Critics of the Obama Administration’s position allege that the Treasury Department’s diplomatic approach to the issue has been ineffective. Some critics also have taken issue with the Treasury Department’s perceived unwillingness to characterize US trading partners (namely China) as “currency manipulators” despite frequently alleging in semi-annual reports that the currencies at issue are undervalued.

House Ways and Means Committee Ranking Member Sander Levin (D-MI) reiterated these criticisms following the release of the April 2015 report. In an April 13 article, Rep. Levin referenced the report while arguing that the Treasury Department’s approach to addressing alleged currency manipulation has been ineffective. As an alternative to the current approach, Rep. Levin urged the inclusion of a “rules-based currency discipline in the TPP.” In contrast, the April 2015 report did not express significant concerns regarding the exchange-rate policies of Canada, Japan, or Mexico (the only parties to the TPP negotiations that were evaluated in the report).

Congressional Democrats are widely expected to withhold support for any TPA legislation that does not contain a provision requiring US FTAs, including the TPP, to contain enforceable currency disciplines. While unlikely to be

adopted due to opposition from the Republican leadership and the Obama Administration, such a provision could, if adopted, significantly complicate efforts to enact TPA. The Obama Administration and the Republican leadership therefore likely will continue to limit support for currency-related legislation as Congressional debate over TPA and TPP intensifies.

Click [here](#) for a copy of the Treasury Department's April 2015 report.

US Lawmakers Introduce Legislation to Reauthorize Generalized System of Preferences and Other Preference Programs

On April 16, 2015, Senate Finance Committee Chairman Orrin Hatch (R-UT), Ranking Member Ron Wyden (D-OR), House Ways and Means Committee Chairman Paul Ryan (R-WI), and Ranking Member Sander Levin (D-MI) introduced the AGOA Extension and Enhancement Act of 2015 ("AGOA 2015"). AGOA 2015 would reauthorize the Generalized System of Preferences (GSP) through December 31, 2017 and provide retroactive duty relief for eligible articles imported during the program's lapse. The legislation also would extend the African Growth and Opportunity Act (AGOA), the Hemispheric Opportunity through Partnership Encouragement Act, and the Haiti Economic Lift Program through September 30, 2025.

Reauthorization of GSP

AGOA 2015 would reauthorize GSP while making only minor modifications to the scope of eligible articles under the program. The modifications contained in AGOA 2015 would (i) authorize the President to designate cotton articles classified under Harmonized Tariff Schedule (HTS) subheadings 5201.00.18, 5201.00.28, 5201.00.38, 5202.99.30, or 5203.00.30 as eligible articles for countries designated as least-developed beneficiary developing countries; and (ii) extend from July 1 to October 1 the date each year by which the President must determine to terminate duty-free treatment for articles subject to a competitive need limit (CNL) or, alternatively, to issue a CNL waiver. The CNL requirements for GSP established by the Trade Act of 1974 require the President to terminate duty-free treatment for an article originating from a beneficiary developing country (BDC) if imports of the article from that BDC (i) exceed a specified threshold value during a calendar year or (ii) account for more than 50 percent of the value of total US imports of that article during a calendar year. However, the President is authorized to issue a CNL waiver upon determining that continued duty-free treatment of the article would be in the economic interest of the United States, and BDCs frequently petition the Executive Branch for such waivers. AGOA 2015 as written does not seek to modify other core components of GSP, such as country eligibility requirements or rules of origin.

Retroactivity to July 31, 2013

AGOA 2015 would extend the preferential treatment applied under GSP to all entries of eligible articles that have occurred since the program's expiration on July 31, 2013. Were AGOA 2015 to be enacted, requests for liquidations or re-liquidations of such entries would need to be filed with US Customs and Border Protection within 180 days after the enactment of the legislation. Any amounts owed by the United States pursuant to the liquidation or re-liquidation of such entries would be paid, without interest, within 90 days of the date of the relevant liquidation or re-liquidation.

Next steps for AGOA 2015

AGOA 2015 is expected to be considered by Congress on the same schedule as Trade Promotion Authority legislation ("TPA 2015"), which was also introduced on April 16. As such, the Senate Finance and House Ways and Means Committees will consider AGOA 2015 during markup sessions scheduled for April 22 and 23, respectively. Sens. Johnny Isakson (R-GA) and Chris Coons (D-DE) are planning to propose an amendment to AGOA 2015 to address concerns related to South Africa's inclusion in AGOA; however, these concerns are not expected to complicate prospects for approval of the legislation.

The House Ways and Means and Senate Finance Committees are expected to approve TPA 2015 and AGOA 2015 in the coming weeks, and the House and Senate sponsors of the bills will attempt to advance the legislation to the chambers' floors as soon as possible thereafter. Congressional leaders are seeking to vote on both pieces of legislation before the Memorial Day recess on May 22 – a highly ambitious timeframe with little (if any) margin for

error. House Speaker John Boehner (R-OH), a proponent of TPA 2015, recently stated that he expects TPA 2015 to be passed “over the next several months,” indicating that debate over the bill might continue into the summer. By extension, this timeframe likely would apply to AGOA 2015 as well, despite the fact that the programs authorized by AGOA 2015, unlike TPA 2015, enjoy broad bipartisan support. However, AGOA 2015 is a stand-alone bill and thus could still be enacted by Congress in the unlikely event that TPA 2015 fails to win Congressional approval.

Click [here](#) for a copy of AGOA 2015.

USTR Welcomes Suspension of Chinese Cybersecurity Regulations; Seeks Continued Discussion of Anti-Terrorism Law

On April 20, 2015, the Office of the US Trade Representative (USTR) welcomed an April 13 official notice issued by the Government of China announcing the suspension of Chinese cybersecurity regulations titled *Guidelines on Promoting the Application of Secure and Controllable Information Technology in the Banking Industry (2014-2015)* (“the Guidelines”). The April 13 notice issued by the China Banking Regulatory Commission and the Chinese Ministry of Industry and Information Technology (i) states that the Guidelines will be revised and reissued in response to feedback received from interested parties and (ii) instructs affected institutions to suspend their implementation of the Guidelines until further notice. The Guidelines were issued on December 26, 2014 and reportedly took effect in March 2015.

In response to the April 13 notice, a USTR spokesperson stated on April 20 that “we [USTR] understand China has issued an official notice to its banking sector, suspending banking measures that impose serious restrictions on foreign firms. We welcome this suspension.” The spokesperson added that USTR “will continue to work with China to ensure that China’s ICT [information and communications technology] policies are consistent with its international commitments.” USTR stated in February that the Guidelines constituted “a major barrier to trade” and alleged in April that the Guidelines “may raise substantive concerns with respect to China’s obligations under the [WTO] TBT Agreement, GATT, GATS or TRIMs, including concerning commitments to accord national treatment.

The United States directly questioned the Guidelines on March 26 in the WTO Committee on Trade-Related Investment Measures (TRIMS), alleging that certain requirements in the Guidelines favouring locally-produced products could have implications under the TRIMS Agreement. The questions submitted to China by the United States sought to clarify, *inter alia*, (i) how “indigenous” and “controllable” technologies would be defined under the Guidelines and (ii) how indigenously-developed technologies differ from foreign-developed technologies in a manner relevant to cybersecurity and China’s policy objectives. The United States expressed concerns that the Guidelines “would severely limit access to China’s commercial banking sector for many foreign ICT products, services and technologies, and would dictate the business decisions of financial institutions, including foreign financial institution investors.” Further, the United States noted in its questions that China’s WTO accession commitments require (i) all state-owned and state-invested enterprises to make purchases based solely on commercial considerations and (ii) that the enterprises of other WTO members have an adequate opportunity to compete for sales to these enterprises on non-discriminatory terms.

USTR stated on April 20 that the United States wishes to work with Chinese authorities on ICT-related provisions in China’s draft anti-terrorism law, which was released in November 2014. USTR has alleged that the law as drafted would (i) impose in-country data storage requirements on “all telecom and internet businesses” in China; (ii) require telecommunication and Internet service providers to pre-install cryptographic solutions in ICT equipment with Chinese encryption algorithms and undergo related conformity assessment procedures for all such equipment; and (iii) require information security testing of “new internet apps,” which could impact a wide range of US businesses in China in sectors where business is conducted over the Internet. According to USTR, the draft anti-terrorism law “may raise questions with respect to China’s obligations under the TBT Agreement.” White House Cybersecurity Coordinator Michael Daniel confirmed on March 12 that China’s National People’s Congress (NPC) has suspended consideration of the anti-terrorism law but cautioned that the NPC could resume consideration of the law “at a moment’s notice.”

House Ways and Means and Senate Finance Committees Approve TPA, TAA, Customs Reauthorization, and Trade Preference Bills

Last week, the House Ways and Means and Senate Finance Committees approved (i) the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (TPA 2015); (ii) the *AGOA Extension and Enhancement Act of 2015* (AGOA 2015); (iii) the *Trade Adjustment Assistance Enhancement Act of 2015* (TAA 2015); and (iv) the *Trade Facilitation and Trade Enforcement Act of 2015* (Customs Reauthorization). The four bills were approved at markup sessions held by each committee, during which lawmakers offered and debated various amendments before reporting the bills to the full House and Senate. We summarize the present status of the legislation below.

The Bipartisan Congressional Trade Priorities Act of 2015 (TPA 2015)

The Senate Finance Committee approved TPA 2015 by a vote of 20 to 6, with 13 Republicans and 7 Democrats voting favorably. The House Ways and Means Committee approved TPA 2015 by a vote of 25 to 13, with 23 Republicans and 2 Democrats voting favorably.

Notably, the Finance Committee voted 15 to 11 to reject a controversial amendment offered by Sen. Rob Portman (R-OH) which would have established a principal negotiating objective to include enforceable currency rules in US free trade agreements (FTAs). A similar amendment proposed by Rep. Richard Neal (D-MA) was defeated by the Ways and Means Committee by a vote of 14 to 24. The adoption of such amendments would have made Congressional passage of TPA 2015 unlikely. Although these amendments were defeated in committee, similar amendments will be offered again when TPA 2015 is considered by the full House and Senate.

The Finance Committee adopted two non-controversial amendments to TPA 2015 which would (i) strengthen the existing “good governance” negotiating objective; and (ii) add a negotiating objective, applicable only in the context of the Trans-Atlantic Trade and Investment Partnership (TTIP), to discourage the adoption of boycotts, divestments, or sanctions against Israel. These amendments were also adopted by the Ways and Means Committee, and are not expected to jeopardize the bill’s passage.

However, over the objections of Sen. Hatch, the Finance Committee adopted an amendment offered by Sen. Robert Menendez (D-NJ) that would prohibit expedited (i.e., “fast-track”) consideration of any FTA involving a country listed under “Tier 3” in the US State Department’s annual Trafficking in Persons Report. The State Department defines Tier 3 countries as those whose governments do not fully comply with certain “minimum standards for the elimination of trafficking” and are not making significant efforts to do so. In contrast, the version of TPA 2015 approved by the Ways and Means Committee did not include this provision.

Ways and Means Committee Chairman Paul Ryan (R-WI) has expressed concerns that the human trafficking provision in the Senate bill could complicate the TPP negotiations, because Malaysia, a party to the negotiations, is presently designated as a Tier 3 country by the State Department. When pressed on the matter by House Democrats, Rep. Ryan did not rule out the potential inclusion of the provision in the House version of TPA 2015, but expressed a strong reluctance to doing so. Obama Administration officials have also expressed opposition to the provision.

Senators who support the TPP are expected to offer an amendment on the Senate floor that would remove the human trafficking provision from TPA 2015, or modify its language in order to ensure that the TPP will be eligible for fast track consideration. Alternatively, if the House were to approve TPA 2015 before the Senate, the Senate could approve the House version of TPA 2015, which does not presently contain the human trafficking provision.

Trade Facilitation and Trade Enforcement Act of 2015 (Customs Reauthorization)

Both committees approved customs reauthorization bills by voice vote. The bills would reauthorize various trade facilitation and enforcement functions of US Customs and Border Protection (CBP) and establish new procedures for the enforcement of certain US trade laws. However, the House and Senate customs reauthorization bills as introduced contain several key differences.

The Senate customs reauthorization bill includes Sen. Ron Wyden's (D-OR) *ENFORCE Act*, which would require CBP to adhere to certain investigating procedures and deadlines when responding to allegations of antidumping (AD) or countervailing duty (CVD) evasion. The House customs reauthorization bill contains similar provisions, but would make the US Department of Commerce (DOC) responsible for conducting these investigations, among other differences.

The Senate bill also included an expanded version of Sen. Sherrod Brown's (D-OH) *Leveling the Playing Field Act of 2015* (S. 891). S. 891 would amend US trade remedy laws in a manner favorable to petitioners in US trade remedy investigations, including by modifying the injury standard used in such investigations. The version of S. 891 included in the Senate bill contains new provisions supported by the US steel industry, which would modify (i) the causation standard applied by the International Trade Commission (ITC) during its injury analysis; and (ii) the manner in which the ITC assesses captive production. In contrast, the House version of the customs reauthorization bill did not include S. 891 or these new provisions.

The differences between the House and Senate versions of the customs reauthorization bill were further exacerbated by the Finance Committee's adoption of the following amendments:

- **Currency undervaluation and cvds.** The Finance Committee voted 18 to 8 to adopt an amendment offered by Sen. Charles Schumer (D-NY) that would add the text of the *Currency Undervaluation Investigation Act of 2015* (S. 433) to the bill. The amendment would direct the DOC to consider undervalued currency as a prohibited export subsidy for purposes of US CVD investigations.
- **Currency remedies.** The Finance Committee voted unanimously to adopt an amendment offered by Sen. Michael Bennett (D-CO) that would authorize certain remedial actions against countries determined by the US Treasury Department to be engaged in currency manipulation, including (i) prohibitions on any new official financing from the United States; and (ii) restricted access to US federal government procurement.
- **Miscellaneous tariff bill (MTB).** The Finance Committee agreed by voice vote to include the text of the *American Manufacturing Competitiveness Act* (S. 998) in the bill. The amendment would reform the MTB process by allowing companies to submit proposals for duty suspension directly to the International Trade Commission (ITC) and reserving final approval for Congress.

The Finance Committee also voted 21 to 5 to adopt an amendment offered by Sen. Brown pertaining to forced and indentured labor. The amendment would eliminate an exemption in the *Tariff Act of 1930* which allows the importation of goods produced by forced or indentured labor if the United States does not produce those goods in quantities sufficient to meet US demand. The House version of the bill also would eliminate this exemption.

Rep. Charles Boustany (R-LA), a co-sponsor of the House customs reauthorization bill, has acknowledged the significant differences between the House and Senate versions of the legislation. Rep. Boustany stated that the different approaches to AD/CVD enforcement could likely be reconciled during an eventual conference committee with the Senate. However, House Republicans have indicated that the inclusion of the MTB, currency, and *Leveling the Playing Field Act* language in the Senate bill will make reconciliation of the House and Senate bills difficult. In fact, observers have suggested that Sens. Hatch and Wyden intentionally sought to steer such controversial amendments towards the customs reauthorization bill to prevent their inclusion in TPA 2015, thus maximizing prospects for Congressional approval of TPA 2015. As a result, Congressional approval of a customs reauthorization bill in 2015 appears unlikely.

AGOA Extension and Enhancement Act of 2015 (AGOA 2015)

Both committees expressed broad bipartisan support for AGOA 2015, and reported the bill favorably by voice vote. The Finance Committee adopted amendments to AGOA 2015 that would, *inter alia*, (i) make certain travel goods eligible for duty-free treatment under the Generalized System of Preferences; (ii) require the President to conduct an out-of-cycle review of South Africa's AGOA eligibility; and (iii) modify the tariff classifications of certain

footwear and outerwear. While the Ways and Means committee did not consider such amendments, Chairman Ryan signaled willingness to reconcile these minor differences between the House and Senate bills during an eventual conference committee with the Senate.

Trade Adjustment Assistance Enhancement Act of 2015 (TAA 2015)

TAA 2015 would expand and extend the TAA program through June 30, 2021 while authorizing annual appropriations of USD 450 million to fund the program. TAA is a federal entitlement program providing training and financial assistance to US workers who claim to have been adversely impacted by foreign trade and meet certain eligibility criteria. The Finance Committee approved TAA 2015 by a vote of 17 to 9, with 5 Republicans and 12 Democrats voting in favor. The Ways and Means Committee approved TAA 2015 by a voice vote. Although the majority of Congressional Republicans oppose TAA, the Republican leadership has agreed to allow a vote on the extension of the program in order to secure Democratic support for TPA 2015.

TAA 2015 is modeled after the *Trade Adjustment Assistance Extension Act of 2011* - a substantially expanded version of the TAA program under which (i) workers in all sectors, including the services sector, are eligible for TAA benefits (except for public employees); and (ii) workers impacted by trade with countries that do not have an FTA with the United States are eligible for benefits. Since their implementation in 2009, these expansions of TAA's original scope have significantly increased the cost of the program.

TAA 2015 is expected to face obstacles in the House. House Republicans generally oppose TAA due to concerns regarding the program's cost and effectiveness. In addition, certain House Democrats are dissatisfied that the cost of TAA 2015 would be offset by the extension of an existing sequestration of federal funding for Medicare. Rep. Ron Kind (D-WI) indicated on April 23 that the use of such an offset would jeopardize House Democratic support for TAA 2015, and by extension, TPA 2015. In response to these concerns, Chairman Ryan stated that he would work to find a more acceptable offset for TAA 2015 before the bill is considered on the House floor.

Next steps

The full Senate is expected to take up TPA 2015 and the other legislation described above in early May. Senate Majority Leader Mitch McConnell (R-KY) has stated that he hopes to secure Senate approval of TPA 2015 during the current work session ending on May 22 – a highly ambitious timeframe with little (if any) margin for error. Chairman Ryan has expressed a desire for the House to approve TPA 2015 concurrently with the Senate; however, this goal is also ambitious. House Democratic support for TPA 2015 is presently lacking, and House Speaker John Boehner (R-OH) has signaled a desire for greater bipartisan support before bringing the bill to the House floor. Unless the Obama Administration can secure additional Democratic support for TPA 2015 within a relatively short timeframe, Congressional approval of the bill might not occur until after Congress returns from the Memorial Day recess on June 1.

Free Trade Agreement Highlights

US Department of Agriculture Highlights Potential Market Access Benefits for US Exporters under TPP

On April 7, 2015, the US Department of Agriculture (USDA) published a fact sheet listing 23 different categories of US agricultural exports that are expected to benefit from tariff reductions under the potential Trans-Pacific Partnership (TPP) agreement. The Obama Administration's publication of the fact sheet likely was intended to motivate the affected US agriculture exporters to lobby the US Congress for swift passage of Trade Promotion Authority in order to secure the announced TPP benefits.

According to the fact sheet, all Parties to the TPP negotiations will reduce tariffs on rice and dairy products from the United States under the potential agreement. However, the fact sheet does not specify which Parties have agreed to reduce tariffs on US exports in the remaining 21 product categories, or to what level the relevant tariffs are expected to be reduced.

The fact sheet suggests that multiple TPP parties have agreed to reduce tariffs on the following twelve categories of US agricultural exports, stating that tariffs in these categories will be reduced "across the TPP region" under the potential agreement: (i) barley and barley malt; (ii) beef; (iii) citrus fruits and juices; (iv) cotton; (v) feeds and fodder; (vi) fruits; (vii) hides and skins; (viii) pork; (ix) poultry; (x) soybeans and soybean products; (xi) vegetables; and (xii) wheat. The fact sheet also states that tariffs on nine additional categories of US agricultural exports will be reduced under the potential agreement, but provides no indication of the number of Parties that have agreed to such reductions. These categories include (i) apples; (ii) beer; (iii) cherries; (iv) corn; (v) distilled spirits; (vi) pears; (vii) potatoes and potato products; (viii) tree nuts; and (ix) wine.

Click [here](#) for a copy of the USDA fact sheet.

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